

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SCOTTY BYERS

Plaintiff,

VS.

BANK OF NEW YORK MELLON, et al.

Defendants.

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Case No. 4:12cv143

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On June 7, 2013, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Second Motion to Dismiss (Dkt. 33) be GRANTED and that Plaintiff's claims be dismissed for failure to state a claim.

The court has made a *de novo* review of the objections raised by Plaintiff as well as Defendant's response and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants' Second Motion to Dismiss (Dkt. 33) is GRANTED and Plaintiff's claims are dismissed for failure to state a claim.¹

IT IS SO ORDERED.

SIGNED this the 6th day of September, 2013.

A handwritten signature in black ink that reads "Richard A. Schell". The signature is written in a cursive, flowing style.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

¹Because the court finds that Plaintiff has not stated a claim, it need not reach the merits of Defendant's motion for summary judgment. Therefore, the court need not address Plaintiff's request to consider his late filed summary judgment response and it (Dkt. 43) is DENIED as MOOT.